



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: James H. Braun, Jr.

File: B-240337

Date: August 30, 1990

DECISION

James H. Braun Jr., appeals a decision by our Claims Group denying his request for waiver of the full debt he incurred as a result of an erroneous payment to him upon his separation from military service. We affirm the Claims Group's decision.

Mr. Braun separated from the Naval Reserves on December 30, 1985. On December 15, Mr. Braun had been paid, by direct deposit to his credit union account, for the first half of the month at the usual semi-monthly rate, less allotments, of \$1,152.75. Shortly before separation he met with payroll personnel to review his entitlement, and consistent with that review he received on the separation date a total of \$3,609.42. That amount represented pay and allowances, with no deduction for allotments for the second half of December, plus payment for 32.5 days of leave. On December 30 the Navy also issued to Mr. Braun's credit union account an erroneous direct-deposit payment of \$1,152.46 for the second half of December.

The failure to reflect allotments in Mr. Braun's separation pay, and the direct deposit of a second payment to him for the last half of December, resulted in a total overpayment (adjusted for certain other credits) of \$1,488.60.

The Navy advised Mr. Braun of the overpayment in July 1986. Mr. Braun then asked for waiver on the basis that he had no reason to know he had been overpaid. The Navy forwarded the matter to our Office for consideration under 10 U.S.C. § 2774, which gives the Comptroller General authority to waive the collection of debts to the United States arising from overpayment of pay or allowances to military personnel when collection would be against equity and good conscience and not in the government's best interest.

In forwarding the waiver request, the Navy recommended that waiver be granted with respect to the allotment amount, since Mr. Braun had no reason to be aware that he was receiving allotment money the Navy also was distributing to payees on his behalf. The Navy, however, recommended against waiver of

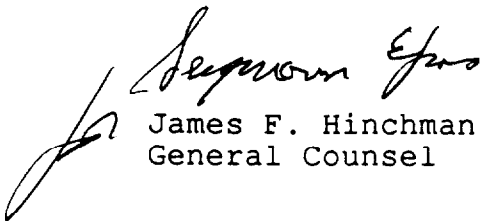
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the remaining amount, \$1,041.68, on the basis that Mr. Braun should have questioned his entitlement to the second payment he received for the last half of December, that is, the direct-deposit payment issued in addition to his separation check. The Claims Group agreed with the Navy's recommendations.

Mr. Braun, in appealing our Claims Group's decision, says he does not understand the finding that he was overpaid, and maintains that even if he in fact was overpaid waiver should be granted based on his pre-separation meeting with pay officials, who he says assured him that everything was in order.

We think that the record establishes that there was an overpayment in that the Navy has shown that the December 30, 1985, direct deposit reflected the same semi-monthly pay that Mr. Braun received at separation. Mr. Braun does not suggest that he was not told when reviewing his entitlement before separation that the amount he was to receive would include pay for the last half of December as well as for accumulated leave and allotments, or that he was told to expect a second payment. In our view, once Mr. Braun knew that his credit union account had been credited on December 30 with the same net amount he had been receiving as semi-monthly pay, he had a duty to set the money aside and inquire into the matter, rather than simply accept the payment. See Chief Warrant Officer Harmon H. Simes, Jr. (Retired), B-202492, Oct. 9, 1981 (which concerned the same type of post-separation payment involved here).

Our Office will not grant waiver under 10 U.S.C. § 2774 where a reasonable person should have been aware that he was receiving payment in excess of his proper entitlement. See Chief Warrant Officer Harmon H. Simes, Jr. (Retired), B-202492, supra; Commander Clayton H. Spikes, USN (Retired), B-234253, May 4, 1989. On this record, we think Mr. Braun should have suspected the direct deposit of \$1,152.75 was in error, and should have acted to have it corrected. Accordingly, our Claims Group's denial of waiver of the non-allotment portion of Mr. Braun's indebtedness is affirmed.


James F. Hinchman
General Counsel